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## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

MARK FITZHENRY,	) Civil Action No.: <u>2:14-CV-877-DCN-BM</u>
Plaintiff,	) ) )
v.	NOTICE OF REMOVAL
LIFEWATCH, INC., EVAN SIRLIN and	)
JOHN DOE, Individually,	)
Defendants.	, )
	)

Pursuant to 28 U.S.C. § 1446, Defendants Lifewatch, Inc. ("Lifewatch") and Evan Sirlin ("Sirlin")(collectively "Defendants"), by and through the undersigned counsel, invoke the Court's jurisdiction under 28 U.S.C. §§ 1331 and 1441, and state the following grounds for removal:

- 1. On January 30, 2014, Plaintiff Mark Fitzhenry ("Plaintiff") filed a Summons and Verified Complaint in the Magistrate's Court for Charleston County, South Carolina captioned *Mark Fitzhenry v. Lifewatch, Inc., Evan Sirlin and John Doe*, Case No.: 2014CV1010600071.
- 2. Plaintiff subsequently served the Summons and Verified Complaint on Defendants through the Office of the Secretary of State of South Carolina.<sup>1</sup>
- 3. Pursuant to 28 U.S.C. § 1446(b), Defendants are filing this Notice of Removal in a timely manner within thirty (30) days of service of the Summons and Verified Complaint.
- 4. A true and accurate copy of the Summons and Verified Complaint is attached as Exhibit 1. Defendants have not otherwise appeared in this action, no further proceedings have occurred, and trial has not yet commenced.

WCSR 31973358v2

<sup>&</sup>lt;sup>1</sup> Defendants do not concede that this Court has personal jurisdiction.

5. This Court has federal question jurisdiction of this action under the provisions of 28 U.S.C. § 1331, as the Verified Complaint is premised on a claim that Defendants have violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 and the regulations imposed pursuant to that statute. See Mims v. Arrow Fin. Servs., LLC, 132 S. Ct. 740 (U.S. 2012).

- 6. Defendants submit this Notice of Removal without waiving any grounds for dismissal or waiving any defenses to the claims asserted by Plaintiff, and without conceding that Plaintiff has alleged any claims on which relief may be granted.
- 7. The Magistrate's Court for Charleston County, South Carolina, in which this action was commenced and from which this action is being removed, is within this Court's District and Division.
- 8. Contemporaneously with the filing of this Notice of Removal, Defendants are filing a Notice of Filing Notice of Removal with the Clerk of the Magistrate's Court for Charleston County, South Carolina, with a copy provided to Plaintiff, as required under 28 U.S.C. § 1446(d).

WHEREFORE, Defendants request that the above-referenced action now pending against them in the Magistrate's Court for Charleston County, South Carolina be removed to the United States District Court for the District of South Carolina, Charleston Division, and respectfully request that this Court take jurisdiction of this action for the determination of all issues, trial, and judgment, to the exclusion of any further proceedings in the Magistrate's Court for Charleston County, South Carolina.

Signature page to follow.

## WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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Dated: <u>03/12/14</u> ATTORNEYS FOR DEFENDANTS LIFEWATCH,

Charleston, SC INC. AND EVAN SIRLIN

## **CERTIFICATE OF SERVICE**

I certify that on March 12, 2014, a true and accurate copy of the foregoing *Notice of Removal* was served via U.S. Postal Service, First Class Mail, postage prepaid on the following:

Mark Fitzhenry 10 Brigadier Drive Charleston, South Carolina 29407

s/Matthew Tillman
Matthew Tillman, Esq.